U.S. Department of Homeland Security 20 Mass, Rm. A3042, 425 I Street, N.W. Washington, DC 20529



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JUN 21 2004

FILE:

Office: NEBRASKA SERVICE CENTER

IN RE:

Applicant:

APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 210 of the

Immigration and Nationality Act, as amended, 8 U.S.C. § 1160

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. The file has been returned to the service center that processed your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

Robert P. Wiemann, Director Administrative Appeals Office **DISCUSSION:** The application for temporary resident status as a special agricultural worker was denied by the Director, Northern Regional Processing Facility. A subsequent appeal was dismissed by the Director, Legalization Appeals Unit. The case is now reopened by the Administrative Appeals Office. The appeal will be sustained.

The facility director found that Gilbert Rocha had not worked at Kansas City Produce (KCP) as a supervisor as claimed, and therefore could not attest to anyone's employment there. The director concluded that the applicant, whose application was supported by an affidavit from Mr. that the had not worked at KCP.

The Director, Legalization Appeals Unit, dismissed the appeal on the same basis.

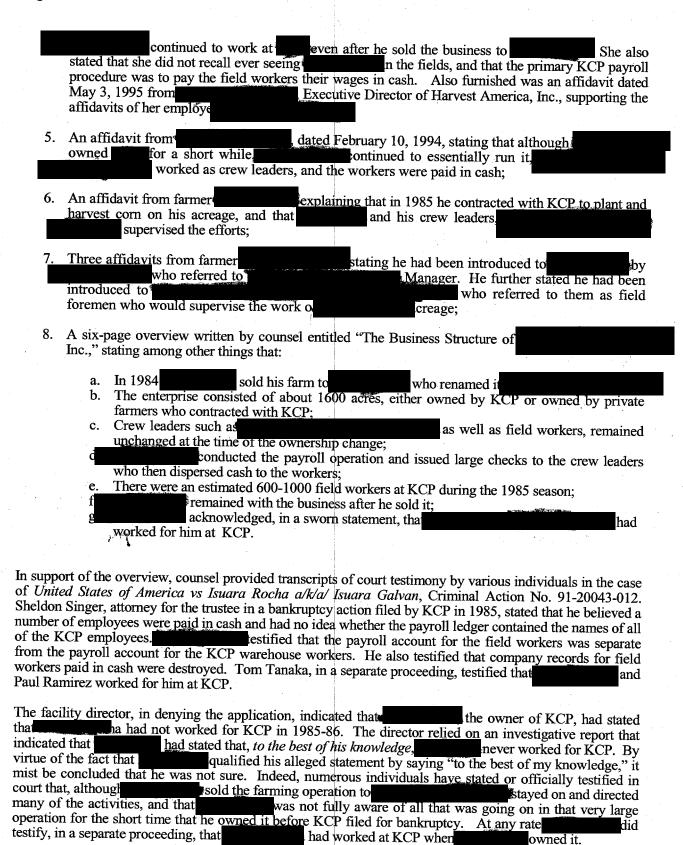
Pursuant to 8 C.F.R. 103.5(b), the Administrative Appeals Office will *sua sponte* reopen or reconsider a decision under section 210 of the Immigration and Nationality Act (the Act) when it determines that manifest injustice would occur if the prior decision were permitted to stand. *Matter of O--*, 19 I&N Dec. 871 (Comm. Feb. 14, 1989)

The adverse information used in this proceeding, that the did not work at KCP, was not accurate. Therefore, the matter will be reopened.

In order to be eligible for temporary resident status under section 210 of the Act an alien must have engaged in qualifying agricultural employment for at least 90 days during the twelve-month period ending May 1, 1986. See 8 C.F.R. § 210.3(a).

In addition to the original affidavit from approximately 110 days from June to October 1985, the applicant has furnished:

- 1. His own affidavit, dated June 26, 1998, explaining in detail the duties he performed for and how the workers were brought to various locations to work. He stated that he was paid in cash every Friday or Saturday. The applicant explained that his crew worked for a crew leader. He referred to three timesheets that he had previously submitted as proof of his work.
- 2. A June 5, 1998 affidavit from R.N., Nurse Coordinator in the of the Kansas City/Wyandotte County Department of Health from 1978 to 1994, explaining that she met the applicant pursuant to her field visits, and attesting to his employment at KCP from May 1985 to May 1986. In another affidavit dated May 4, 1995 tated that she knew James Stafos, and six others as workers with supervisory responsibilities with KCP;
- 3. An affidavit dated May 4, 1998 from Sister Matilda Jaime, Assistant Administrator of the non-profit organization El Centro, Inc., pointing out that between May 1, 1985 and September 1985 she made extensive field visits to and became acquainted with the applicant there. In a second affidavit, dated May 5, 1995, Sister Matilda provided the same information about the supervisors as that furnished by Nancy Wynn and stated that was the primary employer of field workers in the Kansas City area;
- 4. An affidavit dated May 3, 1995 from Corporation, another non-profit organization, explaining that from May 1, 1985 to May 1, 1986 she conducted outreach services from one to three days a week a during the farming season. She described in detail her duties for Harvest America, Inc., and stated that seemed to exercise direct control over the crew leaders such



An alien applying for special agricultural worker status has the burden of proving by a preponderance of evidence that he or she worked the requisite number of man-days in qualifying employment. He or she may meet this burden by providing documentation sufficient to establish the requisite employment as a matter of just and reasonable inference. See 8 C.F.R. § 210.3(b).

Given the very extensive evidence provided by counsel, it is concluded that a crew leader at KCP during the qualifying period, and that the applicant did work there as claimed. The applicant has met his burden of proof.

ORDER: The decision of the Legalization Appeals Unit is withdrawn. The appeal is sustained.